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In the

Supreme Court of the United States

OCTOBER TERM, 1948

No. 553

STEPHEN J. ROTH, Attorney General, Successor to EUGENE F. BLACK, Attorney General, in the name and on behalf of the People of the State of Michigan,
Petitioner,

vs.

PRESTON DELANO, Comptroller of the Currency of the United States of America, and
JOSEPH T. CONNOLLY, as Receiver of the First National Bank-Detroit, a national banking association, and as Detroit Representative, Comptroller of the Currency of the United States of America,
Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SUMMARY STATEMENT OF MATTER INVOLVED

This case is the latest in a series of attempts, over the past eleven years, by various Attorney Generals of Michigan, to obtain a declaration, in general terms, that specifically named Michigan escheat acts are "applicable" in the liquidation of First National Bank-Detroit, an insolvent national banking association (R. 15). *Four times* the Court of Appeals for the Sixth Circuit has held they

do not apply (R. 98-101). *Starr v. O'Connor* (1941), 118 F. 2d 548; *Rushton v. Schram* (1944), 143 F. 2d 554; *Starr v. Schram* (1944), 143 F. 2d 561; *Black v. Delano* (1948), 170 F. 2d 966 (R. 98). Further, this Court has denied two petitions of the Attorney General for certiorari. *Starr v. Schram* (1941), 314 U. S. 695. In the last three cases, including this one, *the same act* has been before the court. Moreover, in the first case it was made a part of the Court of Appeals record during the pendency of an application for rehearing, and was in the record before this Court on the certiorari petitions.

On each attempt, the Attorney General has argued that something new is involved. This is not the fact. The main prayers of the instant action (R. 15) are identical, in substance, with those of the Attorney General in each of the previous declaratory judgment petitions. For purposes of comparison, the previous prayers are set forth in the appendix to this brief. No new parties have been added here, no new statute is relied upon and no new principles of law are involved. As the Court of Appeals has said in its opinion here, "their present battle is fought upon essentially the same legal grounds upon which former contests have been waged" (R. 100-101).

A short summary of this protracted escheat litigation is given in respondent's statement opposing jurisdiction on petitioner's appeal herein. It will not be repeated further, except as seems unavoidable in drawing particular attention to matters important to the points advanced in this brief.

The instant declaratory judgment action was filed on June 25, 1946 (R. 1), just five days after the date of the letter of demand on which it is alleged to be based (R. 39-40). This was approximately two years after the bank liquidation had been concluded and the receivership

closed[1] (R. 70). Petitioner, apparently realizing the necessity of so doing, made the Comptroller of the Currency a party defendant (R. 2). Service was not and could not be made on the Comptroller in Michigan (R. 62-63), hence, on his special appearance and motion, the action was dismissed as to him (R. 81). No appeal was taken from this dismissal, and he has not been before the courts in this case (certiorari petition, p. 3).

The receiver of First National Bank-Detroit moved to dismiss the action as to him because no cause of action was stated against him, and upon jurisdictional grounds (R. 64-65). In support thereof, respondent urged that the state act upon which the action is founded is, and has been repeatedly held to be, not applicable in the circumstances here presented; that, by law, respondent has no custody of or control over the funds sought, and no complete records thereof; that, in the absence of the Comptroller of the Currency, the indispensable party, the court has no jurisdiction over the subject matter; that this is a suit against the United States, commenced without its consent; and that the state act, by its own terms, does not apply. Respondent's motion was granted (R. 81).

After submission of the case to the district court for its decision on the motions, the Michigan legislature enacted a new code of escheats, and expressly repealed "Act No. 238 of the Public Acts of Michigan of 1897, being sections 13455 to 13477, both inclusive, of the Compiled Laws

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[1] See the Comptroller of the Currency's eighty-second annual report to Congress, for 1944—table 45 beginning at page 164, with the First National Bank-Detroit receivership covered in item 2299 (p. 169) and in note 10. This Court may take judicial notice thereof. *Texas & Pacific Ry. Co. v. Pottorff* (1934), 291 U. S. 245, 254; *Hardee v. Washington Loan & Trust Co.* (C. A., D. C., 1937), 91 F. 2d 314, 315; *Fletcher v. Jones* (C. A., D. C., 1939), 105 F. 2d 58, 61-62, cert. den. 308 U. S. 555.

of 1929, and all amendments thereto," which includes Act 170 of the Public Acts of 1941. The saving clause is limited to a "pending suit or proceeding." See section 65 of Act 329 of the Public Acts of Michigan for 1947 (Mich. Stats. Ann., sec. 26.1053(65)), set forth in the appendix.

In respondent's view, this declaratory action was not such a "suit or proceeding" as was saved from the repeal. A declaratory action is neither legal nor equitable but purely procedural and advisory. *Hargrove v. American Cent. Ins. Co.* (C. A. 10, 1942), 125 F. 2d 225, 228. It merely declares rights which as a result thereof may be enforced by a subsequent action. *Sinclair Refining Co. v. Burroughs* (C. A. 10, 1943), 133 F. 2d 536, 538. If, in this proceeding, such rights were decided in favor of petitioner, he would then as a matter of law have to institute an action to enforce them. Further, he admits this to be true. In the present case, such action would be too late as it would not have been pending when the escheat act was repealed. This clearly illustrates that the petitioner is seeking a purely abstract or academic ruling, namely, to have rights declared under a repealed act under which the same could not be enforced. It may be noted, alternatively, that if the alleged saving clause was intended to apply to the instant action, it is the only matter thus saved. No other action or proceeding is pending. Hence, it is hardly a matter of general interest to proceed with a declaratory opinion which involves no pending cause.

The Court of Appeals for the Sixth Circuit affirmed the district court's order of dismissal as to respondent, holding, *for the fourth time,* that the Michigan escheat acts, here in question, *do not apply* in the circumstances presented here, this "upon the same principles and au-

thority'' fully discussed in its previous opinions (R. 100). It did not pass upon any other question presented, including the absence of the Comptroller of the Currency as a party (R. 100).

This entire escheat controversy was finally and completely disposed of, respondent believes, by a settlement agreement executed following the Court of Appeals decisions in *Rushton v. Schram, supra,* and *Starr v. Schram, supra,* and filed with the district court in the *Rushton* case. It is not a part of the printed record in this case, since it is an affirmative defense respondent has not been called upon to make. However, it is referred to in a pleading previously filed with this Court, of which this Court may take notice,[2] the possibility of such having been given as a reason, along with the fact that the Attorney General had obtained an extension in the *Rushton* case, for the receiver's application for an extension of time to petition for certiorari in the *Starr* case. Further, the agreement, outside of a dispute as to its effect, is an undisputed fact which petitioner, upon query from the Court, would be bound to admit. It was mentioned by petitioner in his district court brief. Accordingly, the agreement is set forth in the appendix hereto for this Court's information in the event the Court agrees with respondent that it is proper to refer to it in these certiorari proceedings.

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[2] *United States v. California Co-Op. Canneries* (1929), 297 U. S. 553.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

In view of the specific repeal of the act which petitioner seeks to have declared to be applicable, in general, here, there is a first question presented by these proceedings which petitioner has not mentioned. It is:

1. Will this Court declare the right to apply a Michigan statute which has been repealed, saving only "pending suits or proceedings," where such, if declared in favor of petitioner, could only be enforced in a subsequent suit at law or in equity, which obviously would not be a "pending suit or proceeding" at the time the repeal became effective?

It is respectfully submitted that all that is left is an abstract proposition, *that the case is moot* and that this Court will not proceed further herein.

Nor has petitioner been accurate in his statement of the questions he does mention in his petition. First, there are no such things as "deposits" in an insolvent national bank being liquidated under federal law, so there can be no question of applying any law thereto. Second, the Court of Appeals did not hold the state law "invalid." That was not discussed nor was it an issue in the case. Further, petitioner's statements of the questions are incomplete. The questions are more properly as follows:

2. Is the repealed Michigan escheat act, as amended after the date of the insolvent bank's suspension of business, applicable in the liquidation of First National Bank-Detroit, a national banking association, when the National Bank Act provides a complete and exclusive system for winding up the affairs of an insolvent national bank, including complete distribution of all of its effects?

3. Further, may such act be held applicable when the court does not have before it the Comptroller of the Currency, who is directly responsible and accountable for the winding up of the affairs of the insolvent national bank, who has custody, as the instrumentality of the federal government, of the funds sought and sole control over them, who is the only party with any duties in the distribution of those funds and the only party with complete records thereof, and who is the one and only party whose rights, duties and interests would be infringed upon by a holding that the act is applicable?

4. Will this Court undertake, at this late date, long after the closing of the receivership, to consider the same prayer for a declaration of the applicability of the same law to the same insolvent bank receivership which the Attorney General of Michigan preserved his right to ask this Court to review by certiorari in the prior case of *Rushton v. Schram, supra,* and thereafter abandoned, thus making the judgment as between the State of Michigan and the respondent final, conclusive and *res adjudicata*?

As stated, the Court of Appeals has *four* times answered question 2 in the negative. It has not passed upon question 3. Respondent respectfully submits that "No" is the proper answer to both and to question 4, that the questions present nothing new or important for decision by this Court, and that no review is called for herein. Further, to request a declaratory opinion with respect to repealed legislation, and in the absence of an indispensable party, is obviously a futile request.

THE INSTANT PROCEEDINGS ARE MOOT

In this case, petitioner asks only for a general declaration "that Act 238 of the Public Acts of Michigan for the year 1897, and the amendments thereof, being Sections 13455 to 13477, both inclusive, of the Compiled Laws of Michigan for 1929, as amended by Act 170 of the Public Acts of Michigan for 1941, is applicable to the First National Bank-Detroit, a national banking association, heretofore declared insolvent and since such insolvency liquidated," and that defendants are subject to the provisions thereof (R. 15). After submission of the dismissal motions herein, by Act 329 of the Public Acts of Michigan for 1947 [Mich. Stats. Ann., sec. 26.1053 (65)] *the Michigan legislature expressly repealed this very law,* which the Michigan Supreme Court has said was "piecemeal legislation with many apparent inconsistencies" [*Evans Products Co. v. State Board of Escheats* (1943), 307 Mich. 506, 548, 12 N. W. 2d 448, 462].

The repealing section contains a limited saving clause, providing only "that no pending suit or proceeding shall abate or be in any way affected by such repeal." "Proceeding" means no more than the suit, it being defined as any application to a court for the purpose of having matters in dispute judicially determined. *Meyers v. Barlock* (1917), 281 Mich. 629, 632, 275 N. W. 656, 657.

Unless saved, powers derived wholly from a statute are extinguished by its repeal, and all inchoate rights which might have arisen thereunder are thereby divested. *Flanigan v. Sierra County* (1905), 196 U. S. 553, 560; *Ex parte McCardle* (1869), 7 Wall. 506; *Detroit Trust Co. v. Allinger* (1935), 271 Mich. 600, 610, 261 N. W. 90, 94; *Bejger v. Zawadski* (1930), 252 Mich. 14, 19, 232 N. W. 746. A saving clause saves only what it embraces, and

is strictly construed. *United States v. Scharton* (1932), 285 U. S. 518, 521; *Knickerbocker Ice Co. v. Stewart* (1920), 253 U. S. 149, 162; *Hanes & Co. v. Wadey* (1889), 73 Mich. 178, 180, 41 N. W. 222. The saving clause here does not cover rights accrued, duties imposed, penalties or liabilities incurred, and such are not saved, if any there were. The result is that the only question petitioner asks is the only issue, if any, saved—the general question: Does the act apply? However, it has been repealed, so no matter what the answer might have been, it is of no moment now. Nor does it mean anything to declare that defendants would or would not be subject to the act, for it no longer exists. That act, no longer in existence, will support no further proceedings, such as would be necessary. *Sinclair Refining Co. v. Burroughs, supra.* If respondent has any escheat duty or obligation, it is now under a new act. To decide this litigation under the new act would be improper because the new act was enacted after the filing of petitioner's petition herein, has never been before the courts herein, and there is at present no "actual controversy" pending as to it.

Where, *as here,* because of an alteration in the subject-matter, a judgment in the case would not be decisive or controlling of acts and contested rights, but a pronouncement of academic interest only, *the case is moot. United States v. Alaska Steamship Co.* (1920), 253 U. S. 113, 116; Borchard, Declaratory Judgments, page 60. Further, no matter how convenient to petitioner a present decision on an applicability question in general might be, this Court will not pass on abstract propositions or declare, for the government of future cases, principles or rules of law which cannot affect the end result as to the thing in issue in the case before it, here the applicability of the repealed act. *United States v. Alaska Steamship Co.,*

supra, p: 116; *United Public Workers v. Mitchell* (1947), 330 U. S. 75, 89.

Moreover, under the federal declaratory judgment act (formerly section 274-D of the Judicial Code, now Title 28, U. S. Code, sec. 2201), the word "actual," as applied to the word "controversy" is one of emphasis rather than of definition. The question in each case is whether the facts alleged, under all the circumstances, show a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. *Maryland Casualty Co. v. Pacific Coal & Oil Co.* (1941), 312 U. S. 270, 273; *Aetna Life Ins. Co. v. Haworth* (1937), 300 U. S. 227, 239, 240. Here, not only is there now no "immediacy and reality" to the controversy, if any there ever was, but the Comptroller of the Currency, the one party with legal interests adverse to petitioner's claims, is not a party in the case.

It is respectfully submitted that the instant case is now moot. Nor, in any event, can the application of this "piecemeal legislation with many apparent inconsistencies," *which the state legislature has specifically repealed,* be a matter of any great importance so as to be a fit subject to command the attention of this Court.

NO NEW AND NO IMPORTANT PRINCIPLES NOT PREVIOUSLY ESTABLISHED ARE INVOLVED HERE

The instant case, on its so-called merits, is just a repetition of the matter that the Court of Appeals has passed on and decided previously, *three* times. No new parties are added. Petitioner here seeks one and the same declaration his predecessor Attorney Generals sought.

In substance, the prayers of the Attorney Generals in all these actions, including this one, are identical, as shown by a comparison of the main prayers of this action (R. 15) with those of *Starr v. O'Connor, supra,* and *Rushton v. Schram, supra,* set forth in the appendix hereto. As stated by the Court of Appeals, the "present battle is fought upon essentially the same legal grounds upon which former contests have been waged" (R. 100-101). In short, *this case has previously been decided, three times,* by the Court of Appeals, and two petitions for certiorari in connection with this matter have been denied by this Court. *Starr v. Schram* (1941), 314 U. S. 695.

Nor are any new principles of law invoked here. It has been repeatedly held that the National Bank Act provides a complete and exclusive system for winding up the affairs of an insolvent national bank. This includes all distribution of the effects thereof, including the distribution of dividends. *Cook County National Bank v. United States* (1883), 107 U. S. 445, 448; *Davis v. Elmira Savings Bank* (1986), 161 U. S. 275; *Easton v. State of Iowa* (1903), 188 U. S. 220. Further, if Congress has a constitutional power to regulate a particular subject and does regulate it, a state may not infringe thereon, even by way of complementary legislation. *Easton v. State of Iowa, supra,* page 237. This covers the circumstances here.

That petitioner is seeking to infringe upon the duties and interests of the Comptroller of the Currency, who is not a party before the Court, established by and to be performed under federal law, is underscored by a statement in petitioner's main Court of Appeals brief (p. 18), that, by granting the prayers of his petition, "the Receiver and the Comptroller of the Currency will be relieved from what otherwise would be an indefinite term of duty with respect thereto," referring to dividend payments.

In *Rushton v. Schram, supra* the escheat act in question here (as amended in 1941) was analyzed and held not to have nor intended to have retroactive effect so as to be applicable to the First National Bank-Detroit receivership under any view. This is also correct, under well established principles. All claims against an insolvent national bank, if petitioner is advancing one, which is denied, must be liquidated and determined, and all rights fixed, at the date of suspension of business by the bank, which was in 1933 (R. 2). Nothing subsequently done can affect, alter or create such a claim. *White v. Knox* (1884), 111 U. S. 784. Nor can infringement upon a federal function be taken to have been authorized by a state statute. *Johnson v. State of Maryland* (1920), 254 U. S. 51, 57; *Sells v. Defense Plant Corp.* (1946), 295 N. Y. 227, 235, 66 N. E. 2d 289, 291.

It is respectfully submitted that there is nothing involved here sufficient to call for a review by this Court. All applicable principles have long been settled.

THERE IS NO CONFLICT HERE WITH ANY DECISIONS OF THIS COURT NOR BETWEEN ANY OF THE UNITED STATES COURTS OF APPEALS

There is no conflict between any decision of this Court and the decision of the Court of Appeals in this and the prior escheat cases. The authorities relied upon by petitioner in the instant case are the same as those his predecessor Attorney Generals advanced in the previous cases, and which the Court of Appeals has consistently, and properly, held not to be controlling. These are, in the main, *Anderson National Bank v. Luckett* (1944), 321 U. S. 233, and *United States v. Klein* (1938), 303 U. S. 276. Nor is there nor could there be any conflicting decisions in the United States Courts of Appeals as to the applicability of a Michigan escheat statute to the insolvent First National Bank-Detroit.

In its opinion in the *Anderson National Bank* case, this Court pointed out that, in a going bank, the deposits are debtor obligations of the bank, incurred and to be performed in the state of its location. *That is not the case here.* Upon the First National Bank-Detroit being found and declared to be insolvent, custody and control of the bank assets and property passed to the federal government, in the exercise of constitutional and legal powers under federal law. Neither the federal government nor the federal officer or instrumentality, the Comptroller of the Currency, through whom the custody and control is exercised, stand in a debtor relation to anyone, and they are governed by federal law only. *Ex parte Chetwood* (1897), 165 U. S. 443; *Auten v. United States National Bank of New York* (1899), 174 U. S. 125, 141; *Chemical National Bank v. Armstrong* (C. A. 6, 1893), 59 F. 372, 375, affirmed in 176 U. S. 618; Title 12, U. S. Code, sections 192, 193, 194 (R. S., secs. 5234, 5235, 5236).

The moneys made from the liquidation of the bank assets have no situs in Michigan, and the obligations with regard to the handling and distribution thereof are performed by the Comptroller of the Currency in Washington, D. C. Title 12, U. S. Code, sec. 192 (R. S., sec. 5234). These moneys are, in fact, federal funds [*O'Connor v. Rhodes,* (C. A., D. C., 1935), 79 F. 2d 146, 151] which the federal government is bound to see are properly distributed in accordance with federal law. *Burnell v. United States* (1909), 44 Ct. Cl. 535, 548. This action is, in reality, a suit against the United States, involving a matter concerning which it has not consented to be sued. *Maricopa County v. Valley National Bank* (1943), 318 U. S. 357, 362; *Richmond, F. & P. Ry. Co. v. McCarle* (C. A., D. C., 1932), 62 F. 2d 203, cert. den., 288 U. S. 615; *Haskins Bros. & Co. v. Morganthau* (C. A., D. C., 1936), 85 F. 2d 677, cert. den., 299 U. S. 588.

United States v. Klein, supra, has been distinguished and held not applicable by the same state court, the Supreme Court of Pennsylvania, from whence it came to this Court, in circumstances, such as here, where the federal government has custody of the funds in the exercise of constitutional and legal powers under federal law and they are distributable in accordance with federal law. *In re Escheat of Moneys, etc.* (1948), 358 Pa. 133, 136, 57 A. 2d 256, 257.

ABSENCE OF INDISPENSABLE PARTY PREVENTS AN ACTUAL CONTROVERSY HERE

Beyond any question on the so-called merits, it is difficult to conceive how this Court could render any more than a purely advisory opinion, if that, in this case since it does not have before it the *only* party whose rights, duties and interests are adverse to the declaration sought by petitioner.

Under the provisions of the National Bank Act, respondent has neither custody nor control of the funds sought by petitioner, and it is money he is after. Nor, as naturally follows, does respondent have custody or control of the records as to those funds. Respondent has no duties whatsoever in the distribution of dividends from the moneys made from the liquidation of the bank's assets. *That is the function of the Comptroller of the Currency alone.* Even while a national bank receivership is still open, the receiver's functions are restricted to a liquidation of the bank's assets and an immediate payment of the moneys so made over to the Treasurer of the United States, and all this is under the complete direction and control of the Comptroller, who has the entire responsibility for winding up the affairs of the bank. *Ex parte Chetwood* (1896), 165 U. S. 443, 458; *United States v. Weitzel* (1918), 246 U. S. 533, 540; Title 12, U. S. Code, secs. 192, 194 (R. S., secs. 5234, 5236).

Petitioner, to some extent at least, realized the vital position of the Comptroller of the Currency in this matter, and named him as a party defendant (R. 2). In this petition for declaratory judgment, petitioner speaks of the checks or funds "now remaining in the possession and under the control of the said defendant Receiver *and the Comptroller of the Currency*" (R. 5, 12). He alleges there to be a duty to report where "no dealings or transactions had been had between said defendant Receiver and/or his predecessors *and/or the said defendant Comptroller of the Currency of the United States and/or his predecessors*" and the persons entitled to receive dividend checks (R. 12-13).

As the party directly charged with the duty of administering the affairs of the insolvent First National Bank-Detroit, as the party with custody and control of the funds petitioner seeks, as the sole party empowered to distribute these funds, and hence the only party who has complete records thereof, as the one party whose rights, duties and interests are being threatened with infringement, the Comptroller of the Currency is the indispensable party defendant herein. *Webster v. Fall* (1925), 266 U. S. 507; *Gnerich v. Rutter* (1924), 265 U. S. 388; *Warner Valley Stock Co. v. Smith* (1897), 165 U. S. 28; *Drackett Co. v. Chamberlain Co.* (C. A. 3, 1936), 81 F. 2d 866, appeal dismissed and cert. den. 299 U. S. 503. Even had respondent not raised the question, the courts, *sua sponte,* should inquire into the absence of the indispensable party, and petitioner cannot prevail without him before the court. *Minnesota v. Northern Securities Co.* (1902), 184 U. S. 199, 235; *Hooey v. Wilson* (1870), 9 Wall. 501.

Petitioner argues as to the right to bring an action against a receiver alone with respect to establishing claims against an insolvent national bank. However, petitioner does not seek to establish a claim against the bank. He

never was and is not a creditor of the bank. Further, as before stated, claims must be liquidated and determined and rights established as of the date of suspension of business by the bank. Nothing subsequent thereto can create a claim against the bank. *White v. Knox* (1884), 111 U. S. 784. Moreover, if petitioner had a claim against the bank, he comes much too late to establish it. The receivership has been closed since 1944 (R. 70), and claims no longer need be accepted, in fact, cannot be accepted. *Richmond v. Irons* (1887), 121 U. S. 27, 66.

At best, the absence of the Comptroller of the Currency from this action leaves but an abstract proposition upon which this Court is asked to pass.

CONCLUSION

Respondent respectfully submits that there is no valid reason for the allowance of a writ of certiorari in this case, that the circumstances presented foreclose a review herein, and that the Attorney General's petition should be denied.

Respectfully submitted,

ROBERT S. MARX,
900 Traction Building,
Cincinnati 2, Ohio;

LAWRENCE I. LEVI,

FRANK M. WISEMAN,
2443 National Bank Building,
Detroit 26, Michigan,
Attorneys for Respondent.

NICHOLS, WOOD, MARX & GINTER,
900 Traction Building,
Cincinnati 2, Ohio,
Of Counsel for Respondent.

APPENDIX

Main Prayers of Petition for Declaratory Judgment Filed in Starr v. O'Connor

3) That in accordance with Section 274-D of the Judicial Code, Section 400 U. S. C., this Honorable Court declare as follows:

a) That Act 238 of the Public Acts of Michigan for the year 1897 and amendments thereto, being Sections 13455 to 13477, both inclusive, of the Compiled Laws of Michigan for 1929, and Acts 40, 45 and 171 of the Public Acts of Michigan for 1933, are applicable to First National Bank-Detroit, a National Banking Association, now insolvent and in the process of liquidation.

b) That the defendants and each of them, their successors, attorneys, officers, agents and employees are subject to and bound by the provisions of the foregoing laws.

Main Prayers of Petition for Declaratory Judgment Filed in Rushton v. Schram

3. That in accordance with Section 274-D of the Judicial Code, Section 400 U. S. C., this Honorable Court declare as follows:

a. That Act 238 of the Public Acts of Michigan for the year 1897 and amendments thereto, being Sections 13455 to 13477, both inclusive, of the Compiled Laws of Michigan for 1929, as amended by Act 170 of the Public Acts of Michigan for 1941, is applicable to First National Bank-Detroit, a National Banking Association, now insolvent and in the process of liquidation.

b. That the defendant, his successors, attorneys, officers, agents and employees are subject to and bound by the provisions of the foregoing law.

Section 65 of Act 329 of the Public Acts of Michigan for 1947; Michigan Statutes Annotated Section 26.1053(65)

Act No. 238 of the Public Acts of 1897, being sections 13455 to 13477 inclusive of the Compiled Laws of 1929, and all amendments thereto, is hereby repealed, together with all other acts or parts of acts insofar as they conflict with or in anywise contravene any provision of this act: *Provided,* That no pending suit or proceeding shall abate or be in any way affected by such repeal, but the same shall continue in full virtue and effect, notwithstanding such repeal.

Agreement of Settlement Executed Following Court of Appeals Decisions in Rushton v. Schram and Starr v. Schram

THIS AGREEMENT entered into this 25th day of October, A. D. 1944, by and between Herbert J. Rushton, Attorney General, in the name of and on behalf of the People of the State of Michigan, hereinafter referred to as the Party of the First Part, and Joseph T. Connolly, Receiver of the First National Bank-Detroit, hereinafter referred to as the Party of the Second Part.

Witnesseth:

Whereas, Herbert J. Rushton is the presently duly qualified, elected and acting Attorney General of the State of Michigan, and is a party to this agreement in the name of and on behalf of the People of the State of Michigan; and

Whereas, Joseph T. Connolly is the presently duly qualified and acting Receiver of the First National Bank-Detroit, appointed by the Comptroller of the Currency to succeed B. C. Schram, his predecessor Receiver; and

Whereas, the party of the first part did heretofore file suit in the United States District Court for the Eastern District of Michigan, Southern Division, against B. C. Schram, predecessor Receiver of the First National Bank-Detroit, in Civil Action No. 3289, to which suit reference is hereby made, the same being dismissed by said United States District Court under an order entered on April 20, 1943, and being subsequently appealed by the first party to the United States Circuit Court of Appeals for the Sixth Circuit, and being docketed there and known as cause No. 9638; and whereas on May 31, 1944, a decision was handed down by said United States Circuit Court of Appeals affirming the judgment of the United States District Court for the Eastern District of Michigan, Southern Division; and whereas on July 8, 1944, a mandate was issued out of said United States Circuit Court of Appeals, and directed to the said United States District Court for the Eastern District of Michigan, Southern Division, ordering it to proceed in accordance with the opinion of said United States Circuit Court of Appeals; and whereas the time for filing a petition for certiorari in the United States Supreme Court expires on October 28, 1944; and

Whereas, said B. C. Schram, predecessor Receiver of the First National Bank-Detroit, did on July 22, 1941, file two petitions in the United States District Court for the Eastern District of Michigan, Southern Division, in a suit presently pending in that court entitled Raymond W. Starr, Attorney General, in the name of and on behalf of the People of the State of Michigan, in Equity suit No. 8321, one of said petitions being for an additional declaration of

rights, and the other being a petition for the modification of the decree of the District Court previously entered in said cause No. 8321; and whereas an order was entered on April 20, 1943, in favor of said B. C. Schram, predecessor Receiver of the First National Bank-Detroit, on both of said petitions above mentioned, from which order an appeal was also taken to the United States Circuit Court of Appeals for the Sixth Circuit by the party of the first part herein, said cause being docketed there and known as No. 9610; and whereas on May 31, 1944, a decision was handed down by the United States Circuit Court of Appeals reversing the judgment of the District Court; and whereas on July 8, 1944, a mandate was issued out of said United States Circuit Court of Appeals, and directed to the said United States District Court for the Eastern District of Michigan, Southern Division, ordering it to proceed in accordance with the opinion of said United States Circuit Court of Appeals; and whereas the time for filing a petition for certiorari in the United States Supreme Court expires on October 28, 1944; and

Whereas, it is presently the desire of the parties hereto to forever settle, compromise and conclude said litigation above referred to, as well as the claims of the parties:

Now, Therefore, in consideration of the mutual covenants, promises and acts set forth hereinbelow, it is agreed by and between the parties hereto as follows:

1. Said Civil Action No. 3289, entitled Herbert J. Rushton, Attorney General, in the name of and on behalf of the People of the State of Michigan v. B. C. Schram, Receiver of the First National Bank-Detroit, which case has recently been returned to the United States District Court for the Eastern District of Michigan, Southern Division, under the mandate of the United States Circuit Court of Appeals for the Sixth Circuit above referred to, is to be

dismissed with prejudice and without costs to either party by proper stipulation and order of said United States District Court for the Eastern District of Michigan, Southern Division.

2. Said Equity case No. 8321, entitled Raymond W. Starr, Attorney General, in the name of and on behalf of the People of the State of Michigan, v. B. C. Schram, Receiver of the First National Bank-Detroit, which case has recently been returned to the United States District Court for the Eastern District of Michigan, Southern Division, under the mandate of the United States Circuit Court of Appeals for the Sixth Circuit above referred to, is to be dismissed with prejudice and without costs to either party by proper stipulation and order of said United States District Court for the Eastern District of Michigan, Southern Division.

3. The party of the second part agrees to pay to the party of the first part, simultaneously with the execution hereof, and the party of the first part hereby acknowledges receipt of, the sum of Seventy-five Thousand Dollars ($75,000.00).

4. The party of the first part, acting in the name of and on behalf of the People of the State of Michigan, and by and with the approval of the Michigan State Board of Escheats, and by and with the approval of the Michigan State Administrative Board, does hereby forever waive, release and discharge any and all claims of the State of Michigan, or any of its agencies, boards, departments, officers, agents or employees, or his or their successors in office, against the party of the second part, together with any and all of his predecessors or successors in office, and the First National Bank-Detroit, for any and all inactive, dormant, uncalled for or unproven bank deposits in said First National Bank-Detroit, including any and all divi-

dends or interest thereon, and including by way of description, but not by way of limitation, savings accounts, commercial accounts, certificates of deposit, cashier's checks, Christmas savings accounts, and the like thereof, and also including any and all unpaid dividends or interest which have heretofore been declared payable and/or have accrued but have not been paid over to the State of Michigan, or any of its boards, departments or agencies, on any and all claims for such bank accounts in the First National Bank-Detroit which have heretofore been assigned to the Michigan State Board of Escheats.

5. The party of the second part, on behalf of himself and his predecessors and successors in office, and by and with the approval of the Comptroller of the Currency of the United States, does hereby forever waive, release and discharge any and all claims which he may have or hold against the State of Michigan, or any of its agencies, boards, departments, officers, agents, employees, or their successors in office, for any sums of money whatsoever heretofore paid over to the State Public Administrator, or any of his assistants, the State Board of Escheats, or any other department, board, agency, officer, agent or employee of the State of Michigan, on any inactive, dormant or unproven bank accounts in said First National Bank-Detroit, which have heretofore been claimed for and by the State Public Administrator and/or any of his assistants, or which have heretofore been assigned to the Michigan State Board of Escheats.

6. The party of the second part further agrees to deliver to the party of the first part, or to any agency, department, board, officer or employee of the State of Michigan designated by the party of the first part any and all safekeeping items presently held by the party of the second part, and the party of the first part further

agrees that the Michigan State Board of Escheats will administer said safekeeping items in the manner and under the terms as set forth in Act No. 170 of the Public Acts of Michigan for 1941.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

Herbert J. Rushton, Attorney General, in the name of and on behalf of the People of the State of Michigan,
By Foss O. Eldred, Deputy,
Herbert J. Rushton,
First Party

Witnesses:
Lawrence I. Levi
G. Douglas Clapperton

Joseph T. Connolly, Receiver of the First National Bank-Detroit,
Joseph T. Connolly
Joseph T. Connolly,
Second Party

Lawrence I. Levi
G. Douglas Clapperton